IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ALEX STEVENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43706

FILED

JAN 0 7 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of use of a minor in producing pornography and one count of possession of visual pornography of a person under 16 years of age. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Ronald Alex Stevenson to serve three consecutive prison terms of 60-155 months and a concurrent prison term of 12-36 months.

First, Stevenson contends that NRS 200.710 is unconstitutionally vague as it relates to the term "minor."[1] NRS 200.710 provides in its entirety:

> 1. A person who knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance is guilty of a category A felony . . . .

[1]Stevenson raised this issue in a pretrial petition for a writ of habeas corpus filed in the district court; and, in the written guilty plea agreement, expressly preserved this and other issues for review on appeal. See NRS 174.035(3).

> 2. A person who knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance is guilty of a category A felony . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance.

Stevenson argues that because "the age of consent for sexual activity is 16 and sexual portrayal/sexual conduct photographs of 16 year old persons may be lawfully possessed, . . . [it is] reasonable for a person of common intelligence to guess that the meaning of minor . . . is the age of 16 and not 18." Stevenson claims that he therefore believed his conduct was legal. We disagree with Stevenson's contention.

This court has held "that a facial vagueness challenge is appropriate, even where no substantial First Amendment concerns are implicated, if the penal statute is so imprecise, and vagueness so permeates its text, that persons of ordinary intelligence cannot understand what conduct is prohibited, and the enactment authorizes or encourages arbitrary and discriminatory enforcement."[2] Due process, however, does not require "impossible standards of specificity" in statutory language, especially when, if viewed in the context of the entire statutory provision, there are well settled and ordinary meanings for the words used.[3]

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[2]City of Las Vegas v. Dist. Ct., 118 Nev. 859, 863, 59 P.3d 477, 480 (2002); Sheriff v. Vlasak, 111 Nev. 59, 61, 888 P.2d 441, 443 (1995).

[3]Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975) (citing United States v. Brown, 333 U.S. 18, 25-26 (1948)); United States v. Sullivan, 332 U.S. 689, 693-94 (1947)).

In this case, although NRS 200.710 does not define the term "minor," NRS 129.010 provides that the age of majority in Nevada is 18 years of age.[4] Notably, it is unlawful to exhibit or sell obscene material to minors, with "minor" being defined for those purposes as any person under 18 years of age.[5] Accordingly, a person of ordinary intelligence should understand that if it is unlawful to exhibit or sell obscene material to a person under the age of 18 years, it would necessarily be unlawful to use a minor under the age of 18 years in the production of pornography. Therefore, we conclude that the statute in question is not unconstitutionally vague and that Stevenson's contention is without merit.

Second, Stevenson contends that the photographs of the young girls offered by the State to support the charges under NRS 200.710 are not "sexual portrayals" under NRS 200.700(4). NRS 200.700(4) states, in part:

> As used in NRS 200.700 to 200.760, inclusive, unless the context otherwise provides:
>
> . . . .
>
> 4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

The record Stevenson has provided to this court on appeal does not contain the photographs at issue, and thus, this court is unable to review the

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[4]See Manning v. Warden, 99 Nev. 82, 86, 659 P.2d 847, 849 (1983); see also NRS 62A.030(1)(a) (defining "child," in part, as "[a] person who is less than 18 years of age").

[5]See NRS 201.259.

evidence to determine whether it meets the definition of "sexual portrayal." Accordingly, we conclude that Stevenson has not met his burden of demonstrating reversible error in this respect.

Finally, Stevenson contends that the district court abused its discretion by denying his motion for additional investigator/expert fees. Stevenson's motion requested up to $5,000.00 in fees "for the hiring of a California firm that was the only known expert that could be used for obtaining the location on the [computer] hard drives of the photos/files in question." Stevenson claims that the photographs used in support of the State's charges against him were recovered by the FBI from deleted files. We disagree with Stevenson's contention.

Pursuant to NRS 7.135, the district court has discretion to authorize expenses related to investigative services. This court, however, has held "that the State has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants."[6] Further, "[a]lthough [a defendant is] entitled to attempt to prove his theory of defense, the law does not require an unlimited expenditure of resources in [that] effort."[7]

In denying Stevenson's motion, the district court found that the information sought by Stevenson with the requested funding for additional investigation "should be discoverable through the normal discovery process; nothing inhibits the defense from discovering where the

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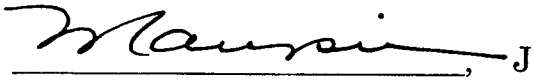
[6]Widdis v. Dist. Ct., 114 Nev. 1224, 1228, 968 P.2d 1165, 1167 (1998).

[7]Sonner v. State, 112 Nev. 1328, 1340, 930 P.2d 707, 715 (1996), modified on other grounds on rehearing by, 114 Nev. 321, 955 P.2d 673 (1998).

FBI's analysis was done and what the results were." The district court further found that Stevenson had not sought the information from the FBI or demonstrated that the information "is not available through normal channels." The district court also denied Stevenson's motion for reconsideration. We conclude that the authorization of additional investigative fees for Stevenson's defense was not necessary, and the district court did not abuse its discretion in denying Stevenson's motion

Having considered Stevenson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
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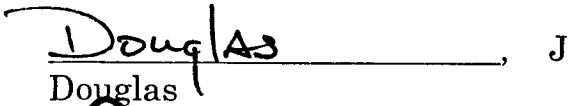

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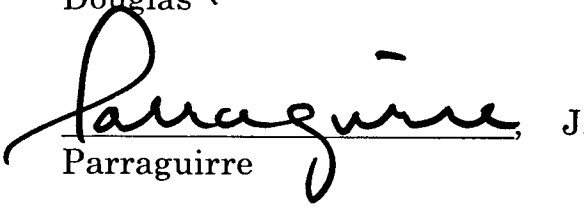

_____, J.
Parraguirre

cc: Hon. Robert E. Estes, District Judge
Steve E. Evenson
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk